

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 YEMISI AKINYEMI,

5 Plaintiff,

6 -against-

7 MICHAEL CHERTOFF, SECRETARY
8 DEPARTMENT OF HOMELAND SECURITY,

9 Defendant.
10 - - - - -x

11 DEPOSITION of YEMISI AKINYEMI, taken by
12 Defendant at the office of the U.S. Attorney, 86
13 Chambers Street, 3rd Floor, New York, New York, on
14 Wednesday, September 12, 2007, commencing at 11:55
15 o'clock a.m., before Debra DiBenedetto, a Shorthand
16 (Stenotype) Reporter and Notary Public within and for
17 the State of New York.
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1 Akinyemi

2 your uniform, your badge, or your professional
3 position to access secured areas while off duty?

4 A I want to -- was I ever told? I
5 want you to repeat that question.

6 Q Sure, let me back up. I first asked
7 you if you were ever told it was permissible. I
8 believe you said no. And then I asked were you
9 ever told it was impermissible?

10 A Impermissible to use it?

11 Q Yes.

12 A Yes, if it's going to affect the
13 government image, yes.

14 Q You were told that?

15 A I knew that.

16 Q Who told you that?

17 A I knew that like from reading the
18 directives and stuff like that, so --

19 Q I want to talk just a little bit
20 about your duties while you worked as CBP.

21 What was your job?

22 A While I was at CBP my job, I was
23 more of an -- as a CBP office position, but I was
24 detailed at 1100 Raymond Boulevard and my
25 responsibility was to attain clients, attend to

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the general public that come in for import clearance, to do paperwork import clearance on behalf of the import specialist, the inspection part of import.

Q When you say import clearance, what's that?

A Things, all imports coming into the you United States go through the U.S. CBP Customs for clearance to make sure that it meets all the required regulations, paperwork, regulations to check the quota, if they're within the limit and guidelines of that commodity. If it's not under restriction. If it's under restrictions, what kind of restrictions, the classifications and all the things. The import specialist does all those classifications, but as officer I was assigned to review, to make sure it meets all those requirements.

Q Okay. And as part of those job responsibilities you had certain sort of professional credentials and things, like you wore a uniform?

A Yes.

Q And you carried a weapon?

Akinyemi

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A Yes.

Q And you had a badge?

A Yes.

Q Okay. And you had what I've heard referred to as an AOA card?

A Yes, I've always had an AOA card even when I was with -- I have an AOA card, I didn't just have an AOA card with CBP. With my previous employer which was Federal Express because of my relations with the Customs I've always had an AOA card. When I changed employment I just changed the name of the employer.

Q And an AOA card, when I say AOA card it's the initials AOA, is that correct?

A Um-hum.

Q What does AOA stand for?

A It's the status that, an access to an operations area.

Q Is this the same thing or is it different from what I've heard referred to as a Port Authority ID?

A It's not different, it's the same thing.

Q It's the same thing. Okay. So

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2 aside from your uniform, your badge, your weapon,
3 your AOA card, what other sort of outward
4 manifestations of your position did you have?

5 A My personality.

6 Q Your personality?

7 A Yes, which is more important.

8 Q Of course.

9 And so you worked on, I think you
10 said Raymond Boulevard?

11 A Yes.

12 Q And you would receive members of the
13 public, members of the public would come in to you
14 and have documents and questions related to import
15 matters?

16 A Yes.

17 Q And you would answer their questions
18 or deal with whatever issues needed to be dealt
19 with?

20 A Yes.

21 Q So would you say that you had a lot
22 of public contact?

23 A I do have -- yes, I have public
24 contact and apart from also working in Raymond
25 Boulevard, based on the schedule, I work at the

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airport on weekends. I work in the passenger area, in immigration area, in inspection, and I also worked in baggage inspection areas.

Q So let's take those two separately. You said you worked at the airports on the weekends?

A Yes.

Q And what was the first type of job?

A Inspection, we call it inspection. Immigration inspection.

Q What's that?

A That is, inspection and examination, you inspect non-U.S. residents and you examine U.S. residents to determine their admissibility.

Q Okay. And where did this work take place?

A It took place in the airport in the primary.

Q In the primary?

A Primary is considered upstairs where passengers, once they get off where the jetway where they're coming to get immigration clearance before they're allowed access to their baggage.

Q I see. And then I think you said

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the second weekend job that you sometimes did was baggage?

A Yes, depending on the assignment that I'm given.

Q And what kind of work was that?

A Inspecting passengers' baggage, luggages that they bring in, for contraband, for what's not allowed. That's what our job, and if I could also put that, I also work at the warehouse.

Q The warehouse?

A Yes, where you examine imports that are coming in, you do examinations.

Q And where is the warehouse?

A We have about five warehouses, we had all around Newark and depending on where you're assigned to work, we had an east coast warehouse, we had the select warehouse, and there's warehouses there. Their consigned warehouse, have individual packages are consolidated to a large package and sent to a broker. I go to the warehouses to examine them for any reason based on the orders that are given.

Q And each of these areas I believe you said first the primary area, the baggage area

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2 and then the warehouse, are these all secured
3 areas?

4 A Yes, because they're internal areas.

5 Q And so, when I say secured areas,
6 these are areas that are not accessible to the
7 members of the general public?

8 A When you're coming in, because
9 they're just getting off the flight.

10 Q So, would it be fair to say the only
11 members of the general public that are allowed to
12 be there are members who are coming off flights?
13 In other words, members of the general public who
14 have no official business to be there are not
15 allowed to be in that secured area?

16 A I will not be able to know, because
17 I've seen so many people there. I don't question
18 them why are they there.

19 Q Okay. Well, let's talk a bit about
20 December 5th, 2005. What happened on the morning
21 of December 5th, 2005?

22 A On the morning of December 5th, 2005
23 we had a call from Nigeria that my father-in-law
24 has been sick, that he passed, and my husband --
25 so, I went to work, because I had no one, my

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responsibility was import for the day, was three officers detailed there, and we have different post manned which has to be manned at all costs. So I went in to work as usual and went to the office of, spoke to my husband first, consoled him, he started making arrangements to go to his father -- I mean to his parents' home. So I went to the office and went to the supervisor's office which was Mitchell Landau, to import specialist supervisor, to explain to him the bereavement of my family. I explained to him what happened that morning, I was the officer that was assigned to stay late, because the office close at 4:30 and somebody has to be there, so I explained this is what happened, I'm not going to be able to stay late. I explained the situation, nobody's going to do this, it's a great thing in the family, but at the same time what's happening, he needs me now. He said okay, what do you think I could do? What would help?

I said I have to leave at this time I need time off, then I'll know, because of my husband is leaving. I'll not be able to wait to 4:30 to close, because there's not going to be

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1 anyone to take care of the kids at home. He said
2 okay. He gave me the excuse for an hour to leave
3 early, because I said I was going to join my
4 husband at the airport. Meanwhile, all through
5 work I was communicating with him, just to console
6 him in such a difficult state.
7

8 Q Let me back up and just ask a couple
9 follow-up questions. Who did you receive the
10 phone call from in the morning informing you of
11 your father-in-law's death?

12 A My brother-in-law from Nigeria.

13 Q From Nigeria?

14 A Yes.

15 Q When did the call come in?

16 A Early in the morning, about
17 5:00 a.m. or six.

18 Q Between the time of when you heard
19 the news of the death in the family and let's say
20 going to the airport, other than speaking with
21 your husband and other than speaking with Mitchell
22 Landau, did you speak with anybody else about the
23 death in the family?

24 A Oh, yeah, a lot of people, the
25 calls, once he told me, I called my sister, called

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I go through security with my husband. He went as a passenger. I just went because I'm in that environment and that is the only way I could come to that environment.

Q Well, I just want to ask you a bit about your conversations with Mr. Slutsky and Mr. McPhail and Mr. Kennedy but it may be helpful to jump forward a bit to talk about what happened when you and your husband went through the security area at the airport. So why don't we do that. We'll have to come back a little bit to the events that led up to it, but it might be a little easier for both of us.

When you went through security with your husband, you accompanied your husband from the public main terminal of the airport to the gate where his plane left, is that correct?

A I did not accompany my husband. My husband went through the passenger, we went to two different places. He went through the passenger line because he had the carry on luggage, he had everything, he went through. I went on the side, where people who work in the airport, where they go through. It's not through -- so my husband, I

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2 did not -- I did not company him through that. He
3 went through as a passenger, went through all his
4 regular screening that needs to be done.

5 Q So your husband went through as a
6 regular passenger and you said you went by the
7 side?

8 A Yes.

9 Q And is this -- do you literally
10 mean, is there a lane that goes around the
11 security area?

12 A Yes.

13 Q And by the security area I mean
14 where they do the metal detector?

15 A Yes.

16 Q And where they do the x-ray
17 machines?

18 A Yes.

19 Q And so you went around that in a
20 lane that was designated for people that work at
21 the airport?

22 A It's designated for everybody.

23 Q Okay, well, what do you mean by
24 designated for everybody?

25 A Because everybody pass through the

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place.

Q But this side lane that you went through, who gets to go through there?

A Like I said, everybody, only the passengers, the people that passengers, the people that get through the side lane is people that have the Port Authority ID.

Q You need a Port Authority ID to get through the side lane?

A Yes.

Q When you say everybody, you don't mean non-ticketed passengers, meaning the general public, the general public doesn't get to go through that side lane?

A The general public does, even if they are not ticketed passenger, if they have the Port Authority ID.

Q The general public did that if they don't have a Port Authority, doesn't --

A They might. There are jobs in general public that don't have Port Authority IDs that work for government agencies that come through that lane even when I was working, yes.

Q And these people you've seen that

1 Akinyemi

2 have gone through without Port Authority IDs were
3 there on some official business?

4 A I wouldn't know, I don't interrogate
5 them.

6 Q Is there anybody monitoring that
7 side lane?

8 A There's always somebody there.

9 Q And who is there?

10 A Depends on who's there, depends,
11 sometimes, I think they have security.

12 Q And can the general member of the
13 public without any ID, without any badge, without
14 any uniform, simply walk through without being
15 challenged?

16 A I would think so.

17 MR. OKOLI: Note my objection.

18 Go ahead and answer.

19 Q You would think so?

20 A Yes.

21 Q Why would you think so?

22 A Because it's an open place for
23 anybody to walk through.

24 Q Have you ever seen anybody simply
25 just walk through?

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MR. OKOLI: Note my objection,
asked and answered.

But go ahead. When he asks
the question, wait a little bit before
you start to respond.

My objection is asked and
answered. But go ahead and answer.

Q When you walked through was there
anybody there checking badges or uniforms or Port
Authority IDs?

A I wouldn't recollect if there was
somebody -- like I say, it's an open place. It's
not a closed place. I'm sure you've traveled a
couple of times, and it's an open place. You
don't know who's who, everybody's just standing,
you don't know what they're doing.

Q Did you stop and speak to anyone as
you were walking through?

A Nobody stopped me, so I didn't stop
to speak to anyone.

Q Did you show your badge or ID to
anyone?

A No.

Q Was your badge visible?

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2 A Yes, my badge is always visible,
3 once I'm in uniform, and I'm coming from work, I
4 have it always visible, both badges for all the
5 locations that I work. I have based on where I'm
6 working all the badges clipped together, I just
7 flip it.

8 Q So you had -- I should go back and
9 be more specific. You have different badges for
10 different places?

11 A Yes.

12 Q And then do you have like just a
13 general badge, you know, like I'm thinking of that
14 a police officer might have that just identifies
15 them as a police officer that has like a shield on
16 it or something like that, do you have that sort
17 of badge?

18 A Yeah, that's the badge on the
19 uniform.

20 Q That's the badge on the uniform,
21 okay. And in addition to that, you have other
22 forms of ID like the authority Port Authority ID
23 or the AOA card, right?

24 A Yes.

25 Q And when you walk through the side

1 Akinyemi

2 lane did you have both your badge and your Port
3 Authority ID badge visible?

4 A Yeah.

5 Q And you were wearing your uniform?

6 A Yes.

7 Q Were you carrying a weapon?

8 A Yes.

9 Q Was your weapon visible?

10 A Yes.

11 Q And I apologize if I've asked this,
12 but you said you didn't speak to anyone as you
13 walked through?

14 A Um-hum.

15 MR. OKOLI: You have to
16 verbalize your answer.

17 A You said what?

18 Q You did not speak to anyone as you
19 walked through the side lane?

20 A I didn't say nothing. I just walked
21 by.

22 Q Did you make eye contact with anyone
23 or nod at anyone?

24 A I wouldn't recollect all these
25 details.

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2 A So my concern was seeing me, at the
3 time I'm supposed to be in a location of
4 assignment, that was my concern.

5 Q What time did you leave work?

6 A About three.

7 Q And where did you go upon leaving
8 work?

9 A Just took the train and I went on to
10 the airport.

11 Q No stops, straight to the airport?

12 A No stop.

13 Q Where did you meet your husband?

14 A At the check-in counter.

15 Q And did your husband check in at the
16 ticket counter?

17 A Yes.

18 Q What airline was it?

19 A Air France.

20 Q And did your husband have any bags
21 with him?

22 A Yes.

23 Q And did he check in the bags at the
24 ticket counter?

25 A Yes.

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Q I think you said after you both got through the security check point through different avenues --

MR. OKOLI: Note my objection, you're mischaracterizing the witness' testimony. She didn't say both of them got through security check point. The husband went through the security screening, she went in through the same place we were discussing and they met at the gate area and continued their conversation.

Q I'm trying to find out where it was that you re-met your husband after you briefly separated.

A After he went through security screening.

Q Right after?

A Yes, at the gate area.

Q And then, what happened at the gate area?

A At the gate area, they were boarding already. The plane was already boarding, so we just had the final discussions and I just went

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back, I was going to go home. I have to go get the kids. I'm at the same time conscious of time to go pick up my kids, we just continued talking the cell phone.

He said Yemisi, you know, I didn't give you this money, I said oh, God, come back and pick it up. I was just coming back, I just went back, he came back he gave me three \$50 bills, I saw Greg and Alice at the gate and I said oh, hi, I said, that's my husband and he give me the money, I just kissed him and he left, that's it.

Q When you had initially arrived at the gate, was your husband questioned by CBP officers?

A I don't know, because once you get at the gate they were boarding. I kissed him, hug him bye, and I consoled him and I left. So I don't know what happened. Nobody questioned at the gate. As a civilian officer you don't question any passenger at the gate, because at the gate we don't have the authority as a security officer to question anybody, we can only question them at the jetway. At the time the intention to travel has --

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years, I'm getting back to on my feet. Because when I read the letter I'm like, what did I do? Did I steal? Did I kill? What my crime was? Because I didn't call out that day, maybe I should call out, because I took the job a very important part of me, if I didn't go all this wouldn't have happened -- there was too much going through my, I couldn't really put things together, because I was trying to pinpoint what I did wrong. That was my first thing, trying to figure out what was wrong, what I did wrong.

Q So, let's talk about the allegations of discrimination. Who do you think discriminated against you?

A Everybody, from the first day there was discrimination, because when I got to the gate as courtesy if I was not a Nigerian, if I was not a black person, if I tell you as an officer that this is my husband there should be no issue of integrity. Officer Hector, DCO Hector said at first on his statement I thought it was an integrity issue. Why would you think integrity? Because I'm a Nigerian, because I'm black. If anybody that is not of my race tell you this is my

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did I misunderstand that?

A Yes, he said on a statement that when his officers at the gate told him they saw me, which was written in black and white, he said I thought it was an integrity issue. Why would he think it's an integrity issue, because I'm a Nigerian? If I told you this person is my husband, why would the question of integrity come in -- if we saw officer Akinyemi with Joe Blow at the gate, and she told us this is my husband, why should the question of integrity come in, because she's a Nigerian, Officer Akinyemi went further before she went left the office, she told Mr. Landau that she was leaving, she was there based on permission, and why should we question why is it Officer Akinyemi, Officer Akinyemi was called to the office -- people been in service for as far back as 20 years and their supervisory records reflect they have been in supervisory position for over ten years. I'm not the first person, they did not go through that, while they have to be reminded or notified of what has to be done for Officer Akinyemi, it's because I'm a Nigerian.

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husband.

Q Everything you do they say she's a Nigerian, have you ever literally heard anyone say, um-hum, she's a Nigerian?

A That was the 5th of December when I told the Officers Jurzac and Long that it was my husband. They didn't believe it. Officer Herter said it's integrity, because I'm a Nigerian, because Nigerians are profiled. So if these other people were profiled and she's one of them, oh, you obviously asked me a question, did you move anything through security for your husband? Why would I move something through the security for my husband? So it's a perceived notion.

Q It's a perceived notion, so in other words none of those individuals have ever stated that they've taken any action with respect to you because you were a Nigerian?

A The action they took against me from the proceeding from the first day of the incident till the termination is taken because I'm a Nigerian.

Q But none of them have said so?

A They would not say. Obviously

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implied. It's more implied. Things are better not implied -- they will not, Officer Gluba who had incidents, Officer Haq was not brought up until I brought it up. Gluba, who had incidents, she's not a Nigerian, she's not a black woman and there were -- she was given a union representative, all the documents you need from the beginning of the incident and the time was giving for her case to be looked into and she was a probationary officer, she got all that. She got all those privilege. She was a provisional officer, based on investigatory report, all the provisional officers that were terminated there is no black there. The ones, if I may go further, the ones that was terminated, the first two provisional, there was a felony or misdemeanor charges, which obviously wouldn't have qualified them for the charge. The two that were not felony, they did not only get first warning, they even got second warning. It was when they maliciously ignored the warning, they were reprimanded. I was not even aware, no one even brought it to my knowledge.

Q So, I'm sorry, who ignored these

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other CBP officers who have gone through that side lane or whatever you want to call it, while off duty?

A Many. Alba Mendez, she was hired the same time I was hired, the parents were going to Puerto Rico, she went there and even took them to the gate.

Q Do you have any knowledge of those individuals who did that with the knowledge of the people that are responsible for making disciplinary decisions? And by this I mean Ms. Haage and Ms. Mitchell?

MR. OKOLI: Note my objection.

Go ahead and answer if you understand that, and if you have the information.

A If I note whether Ms. Haage has the knowledge, I wanted to recollect based on that file, all those things when I brought it up they were not aware of it. It was when I brought it up they were aware. They were not aware of Officer Haq, and I'm sure they were not aware of Officer Gluba. They said we're not aware.

If they were not aware of this

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2 things, terminating me is discriminatory.

3 Q And has Ms. Mitchell done anything
4 else that leads you to believe that she was acting
5 out of a discriminatory intent?

6 A I don't have no contact with her,
7 but based on what I read she had said, she asked
8 for Ms. Haage's opinion so she was acting based on
9 Ms. Haage's opinion and Ms. Haage obviously, to my
10 knowledge, doesn't have the rights and authority
11 to terminate an employee. So she needs a
12 supervisory authority to be able to do that. So
13 that was an opportunity to tell or for her to
14 exercise her discriminatory intent, because it's
15 already been stated that Nigerian are profiled.
16 If Nigerians are profiled, or not profiled, back
17 in my mind, am I going to separate a Nigerian or
18 go with me and Nigerian that are profiled, a
19 Nigerian is a Nigerian.

20 Q Has anybody -- well, have any of the
21 individuals we've discussed that you've alleged
22 discriminated against you, made any statements to
23 your knowledge, about profiling Nigerians?

24 A Yes, that are alleged that I've
25 mentioned know because they don't work on the

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1 floor, because so they weren't be able to have
2 access to that, but the officers that were
3 questioned, and Officer Jurzac also indicated the
4 same thing, when it comes to flights, yes, they
5 inspect Nigerians.
6

7 Q Has any of the people we've
8 discussed, do you have any evidence to support the
9 notion that any profiling of Nigerians as
10 passengers also applies to Nigerians as employees?

11 A Yes. Because it's like I said, if
12 you profile passenger is a Nigerian, you're not
13 going to separate. If you're going to deal with a
14 Nigerian passenger and a Nigerian employee, you're
15 going to do the same ramification of what amount
16 knowledge, what impression you have with them, so
17 you're not going to separate them, because you're
18 dealing with an entity.

19 Q Has anyone, to your knowledge ever
20 indicated, any of the people we've discussed,
21 indicated their belief that Nigerians or black
22 people in general as employees were of lower
23 quality, deserving of harsher treatment or
24 anything of that nature?

25 A They did not say verbally, but their

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implied reactions did say, because if they did not say it verbally, they implied reaction by not letting somebody of black origin or another nationality be exposed or be given the treatment that the others are given. It's so obvious that yes, what's difference this person from this person if it's not who they are. While some issues been discussed and some issues not been discussed, it's because of who I am, a Nigerian.

Q What do you mean some issues discussed and some issues not discussed?

A Like Officer Haq's case, it was not mentioned or discussed. Officer Gluba's case, it took forever. It was not even handled the way mine was handled. A lot of officers had union representation, which can be proven from the union record, that had administrative issues, and none of them was handled this way.

Q Has Ms. Mitchell done anything else that you can think of that reflects in your view a discriminatory animus toward you?

A I have not, I don't have no personal contact with her. Apart from when I meet her at the -- I had my badge from her. Terminating me is

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involved in the whole process, the whole process from the first thing to the termination was discriminatory.

Q Can you think of anybody else that --

A Except the ones that you have on record.

Q Apart from or actually including this incident, has anyone at CBP ever said anything to you about your race or national origin?

A They wouldn't talk to me direct, like I said. As a Nigerian, and you know the perception of what they have, I stood within the scope of my employment, I would not give any room or I would not give an arousal for suspicion or for anything else or for a reason, even if it's so obvious that it is done.

Q I just want to go through a couple of documents and I just want to talk a little bit about some of these other incidents that you've compared your case with. And you've already covered I think most of them, so I'm going to try very hard not to be repetitive. And I'm happy to

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mark these documents as exhibits but mostly I'm just using them to refresh my recollection as to what individuals we're talking about. So far we've discussed Officer Gluba. Was there an incident regarding Officer Mendez?

A Yes.

Q And what was that?

A Officer Mendez escorted her parents to the boarding gate when they were going to Puerto Rico and when they were coming back, bring them back that, welcomed them and she was off duty.

Q How do you know about this?

A Everybody knows. Ashraf Assad, another officer, he knows about it. When, if I may allude a little bit to what Officer Jurzac said in his statement, he said, seeing passengers off is not an issue, right, he said because a lot of officers do it, that was his statement. DCO Herter inside, we do not do it. We do not have jurisdiction over that territory, so who is right, DCO Herter doesn't walk on the gate. He doesn't know what's happening. We walk on the gate. We know what's happening so I see and only -- they

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only bring to the knowledge of their superiors what they want them to know. Mine was brought to their knowledge because I'm a Nigerian. Well, he said it looks bizarre that a Nigerian, that's --

Q I believe we've already spoken about Officer Haq leaving a weapon in the restroom?

A Yes.

Q Is there anything else you want to tell me about, what happened there and how you feel that's comparable?

A I'm not going to question you, but a weapon is a very deadly, dangerous instrument, that's supposed to be kept in a secure, we were even given a safe to lock it up at home, going to the bathroom, leaving a loaded weapon in the public bathroom that is entered by everybody, this is not a bathroom -- not even a bathroom in the secure area where passengers are. The bathroom in the an open area. Once you come to the airport, a general public bathroom from anybody in the street to could come in. That's where it was left. It was treated differently. They knew this incident months, even about a year. It was just counseling, maybe the officers said don't do that

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2 again or counseling, and it was done, swept under
3 the desk. Until I brought it up.

4 Q Did we discuss the incident with
5 Officer Murphy?

6 A No, sir. Pat Murphy, no.

7 Q What was it about the incident with
8 Pat Murphy?

9 A Officer --

10 Q That you felt was discriminatory?

11 A I was working by myself. I work at
12 the seaport sometimes on the cruise vessel.
13 Officer Pat Murphy, I was on duty, he came to
14 welcome his, to pick his wife's sister up in full
15 uniform on a Saturday morning. I say the
16 supervisor was Dominic Calise. He asked him, Pat,
17 I didn't see your name on the schedule, are you
18 here to replace somebody? Sometime you're
19 scheduled and the last minute you call and detail
20 another officer to replace. He said I'm here to
21 pick up my wife's sister, she's coming in from the
22 cruise. Officer Murphy was there. I was there,
23 and Officer Calise was there. He even verified
24 it, are you on duty? He said no, in full uniform,
25 Pat Murphy.